PROPOSED

GUIDELINES ON THE APPLICATION

OF

THE INDIVIDUAL'S RIGHTS PROTECTION ACT

TO

A PERSON WITH A PHYSICAL CHARACTERISTIC

IN

EMPLOYMENT

"...it is recognized in Alberta as a fundamental principle and as a matter of public policy that all persons are equal in dignity and rights without regard to race, religious beliefs, colour, sex, physical characteristics, age, ancestry or place of origin..."

...From the Preamble to The
Individual's Rights Protection Act.

Alberta Human Rights Commission
June 1, 1983

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A. INTRODUCTION

The Individual's Rights Protection Act (I.R.P.A.) of Alberta was enacted in 1972 and amended on September 1, 1980 to include physical characteristics as a protected class. This Act is the anti-discrimination law of the province.

The I.R.P.A. applies to all provincial government departments and agencies as well as all businesses and industries under provincial jurisdiction in all facets of employment policies, practices and referrals.

The Alberta Human Rights Commission, established in 1973, administers the I.R.P.A. The Commission has a two-fold function of education and enforcement.

Among other provisions, the I.R.P.A. makes it a discriminatory act for an employer to deny an individual the opportunity to apply for employment, obtain employment, or be employed, solely on the basis of his/her physical characteristics.

Specifically, sections 7 and 8 of the Act state that:

> **7(1) No employer or person acting on behalf of an employer shall**
>
> **a) refuse to employ or refuse to continue to employ any person, or**

b) discriminate against any person with regard to employment or any term or condition of employment,

because of the race, religious beliefs, colour, sex, physical characteristics, marital status, age, ancestry or place of origin of that person or of any other person.

8(1) No person shall use or circulate any form of application for employment or publish any advertisement in connection with employment or prospective employment or make any written or oral inquiry of an applicant

a) that expresses either directly or indirectly any limitation, specification or preferences as to the race, religious beliefs, colour, sex, physical characteristics, age, ancestry or place of origin of any person, or

b) that requires an applicant to furnish any information concerning race, religious beliefs, colour, sex, physical characteristics, ancestry or place of origin. (1)

The purpose of this paper is to set out guidelines pursuant to section 7 and 8 of the I.R.P.A., with respect to physical characteristics. These guidelines have been written to provide the public with better understanding of this aspect of the I.R.P.A.

The Alberta Human Rights Commission respects the basic rights of an employer to make all decisions with regards to the management of any employment environment while recognizing the fundamental principles of human rights as defined in the Individual's Rights Protection Act.

This paper provides definitions which aid in reading the guidelines, followed by a discussion of the basic principle on which the guidelines are based. The guidelines are then presented, followed by a discussion of the subject areas to which they apply.

1. Individual's Rights Protection Act, Chapter 1-2, RSA, 1980.

B. DEFINITIONS

The following definitions are provided as an aid in reading these guidelines:

1. Physical Characteristics

"...any degree of physical disability, infirmity, malformation or disfigurement that is caused by bodily injury, birth defect or illness and, without limiting the generality of the foregoing, includes epilepsy, paralysis, amputation, lack of physical coordination, blindness or visual impediment, and physical reliance on a guide dog, wheelchair or other remedial appliance or device".(2)

For the purpose of this paper only, where the term physical disability is used it will mean physical characteristics as defined in the Act.

2. Individual's Rights Protection Act, Chapter 1-2, RSA, 1980

2. Infirmity

An abnormal weakness such as impaired heart functions as well as acute diseases.

Beyond a temporary disorder; an ailment of a somewhat established or settled character which at least has a tendency to impair a person's health and physical vigor.

As the word appears in an application for life, health or accident insurance or in any representation, warranty or condition contained in such a policy; a defective condition of a substantial character which in some material degree impairs the physical condition and health of applicant and increases the chance of death, sickness or accident against which the insurance company is asked to issue insurance.

3. Employment Practices

For the purpose of this paper, this term refers to all aspects of employment including advertising positions, interviewing, hiring, promotion, transfers, termination and all other terms and conditions of employment.

4. Equal Treatment

The use of this term in this paper represents the concept of equivalent as opposed to identical considerations in employment.

To be effective, employment practices should provide equal opportunity to achieve the required results. In other words, in order to meet the needs of a person with a physical disability, changes may have to be made to established employment practices.

C. REASONABLE ACCOMMODATION - THE UNDERLYING PRINCIPLE FOR GUIDELINES ON THE APPLICATION OF THE INDIVIDUAL'S RIGHTS PROTECTION ACT TO A PERSON WITH A PHYSICAL DISABILITY IN EMPLOYMENT

The preamble to the I.R.P.A. states that "it is recognized in Alberta as a fundamental principle and as a matter of public policy that all persons are equal in dignity and rights without regard to race, religious beliefs, colour, sex, physical characteristics, age, ancestry or place of origin..."(3)

In keeping with the above, and sections 7 & 8 of the I.R.P.A., these guidelines are based on a fundamental principle accepted by the Alberta Human Rights Commission that a person with a physical disability should be accommodated, to the greatest extent possible, within the environment enjoyed by persons without a physical disability. Further, where possible, employment practices should be designed to accommodate a person with a physical disability. This is the principle of reasonable accommodation.

Having a physical disability does not decrease the rights and responsibilities of an individual as a member of society.

3. Individual's Rights Protection Act, Chapter 1-2, RSA, 1980.

REASONABLE ACCOMMODATION IN EMPLOYMENT

REASONABLE ACCOMMODATION MEANS THE ADAPTATION OF EMPLOYMENT PRACTICES TO ENABLE THE PARTICIPATION OF ANY PERSON WHO HAS THE CAPACITY AND ABILITY TO PARTICIPATE.

TO "REASONABLY ACCOMMODATE" MAY REQUIRE PHYSICAL ALTERATIONS, USE OF PROTECTIVE DEVICES, PROVISION AND USE OF TECHNICAL DEVICES, OR TECHNICAL APPARATUS.

The I.R.P.A. provides protection to all individuals, within the jurisdiction of the Act, against discriminatory employment practices. Employers should be aware of the need to provide reasonable accommodation to a physically disabled person in employment. Furthermore, it is not expected that an employer provide employment to an individual who, because of a physical disability, is or becomes a health or safety hazard to employees and/or the public. There is, however, an onus on the employer to demonstrate that the individual's disability endangers employees and/or the public.

Obviously the qualifier <u>reasonable</u> in the term <u>reasonable accommodation</u> is of great importance. Employment decisions should be based on the capacities and abilities of the individual job applicant. Within any general category of injury or disability, individuals have widely varying degrees of disability or risk of disability.

If an employer can demonstrate that any of the following conditions exist, then it may not be possible to accommodate the physically disabled person:

a. it is physically and financially prohibitive to provide access to the workplace; or

b. it is not practical or financially feasible to modify the methods required to do the job; or

c. to accommodate may create a health or safety hazard.

EXAMPLE

A person with a hearing disability might be safely accommodated, around machinery, if a visual warning (flashing light) was installed in addition to, or in place of the standard audible warning (buzzer).

D. GUIDELINES

(All of these guidelines are subject to the principle of reasonable accommodation.)

I. PHYSICAL ACCESSIBILITY TO EMPLOYMENT

A PERSON WITH A PHYSICAL DISABILITY SHOULD NOT BE DENIED ACCESS TO EMPLOYMENT SOLELY ON THE BASIS OF HIS/HER PHYSICAL DISABILITY.

The existence of a physical disability is not, in itself, an acceptable basis for denying an individual access to employment, recognizing the concept of reasonable accommodation.

EXAMPLE

A physically disabled person may not be denied the opportunity to compete for or fill a position simply because he/she is not able to get from the parking lot into the place of employment. The provision of a wheelchair ramp, or accessible parking may be considered reasonable accommodation.

II. REQUIREMENTS AND QUALIFICATIONS FOR EMPLOYMENT

THE SAME JOB REQUIREMENTS AND QUALIFICATIONS IN EMPLOYMENT PRACTICES MUST APPLY EQUALLY TO A PHYSICALLY DISABLED PERSON AS APPLY TO ALL OTHER PERSONS.

The following employment practices should be evaluated to ensure that there is equal opportunity provided:

A. Position Descriptions - should clearly link job requirements to specific physical abilities, essential skills, capabilities, knowledge and experience, required to adequately perform a job. For the following reasons, it is suggested that job descriptions be provided for each employment situation:

1. it enables the employer to analyze and understand the components of each job,
2. it provides a set of criteria by which both the applicant and the employer may assess an individual's capabilities to perform the job

EXAMPLE

If the job description calls for the ability to load or unload heavy objects from a truck, and an applicant has a back injury of some sort, both the applicant and employer would probably consider the effect of the injury on the applicant's ability to perform safely.

Similarly if the job description requires that a person be able to operate a forklift safely - then both parties would probably consider whether or not an applicant who suffered from epilepsy would be able to satisfy that requirement.

B. Application Forms - questions relative to physical disabilities should not be asked as it is probable that this will result in the screening out of a person with a physical disability.

However, the Commission recognizes that each applicant bears a responsibility to assess his/her own abilities as it relates to the physical requirements of the job.

C. Job Related Testing - should be carried out as an assessment of a person's physical ability, skills, capabilities, knowledge and experience. It is important to note that tests for employment purposes should be carefully selected and monitored as valid predictors of acceptable performance. Job related tests and selection procedures, of course, have a place in the employment process. However, the use of tests which are not job-related may adversely affect the employment opportunities of a physically disabled individual.

D. Job Related Medical - it is not a contravention of the I.R.P.A. for an employer to offer employment, with the understanding that the offer is contingent upon passing a job-related medical.

Post job-offer related medicals, if required, should not be limited to only those who possess a physical

disability. The philosophy of job-related medicals is that they be applied equally to all successful applicants.

If medical examinations are required only of those with a real or perceived disability this would constitute a discriminatory hiring practice. This may result in a disabled person being subjected to more stringent requirements than others not so identified.

All employers, of course, establish eligibility requirements and qualifications which must be met by all individuals who wish to apply for and obtain employment. For the purpose of the I.R.P.A., such requirements and qualifications should be reasonable and related to the position. Requirements that exclude a person from applying for and/or obtaining a position because, for example, he/she is a member of a class, rather than because he/she does not have the qualifications, are unacceptable.

An employer should consider methods of reasonably accommodating a person with a physical disability before deciding that the individual is incapable of, or not qualified to perform the job.

With the adoption of these practices an employer may well preclude complaints of alleged discrimination based on physical characteristics.

III. HEALTH OR SAFETY

IF, FOR HEALTH OR SAFETY REASONS, AN INDIVIDUAL WITH A PHYSICAL DISABILITY IS REFUSED EMPLOYMENT, OR HIS/HER EMPLOYMENT IS TERMINATED, IT MUST BE BECAUSE OF A HAZARD TO THE HEALTH OR SAFETY OF ANY EMPLOYER OR THE PUBLIC.

If an individual otherwise meets the requirements and qualifications for a job, but is refused for reasons of health or safety, the employer must be able to provide factual evidence that there is a reasonable probability that because of an individual's disability, his/her employment may decrease the employer's ability to effectively manage a business.

EXAMPLE

An individual who is subject to epileptic seizures, if employed on a scaffold, could be a safety hazard to himself, fellow employees and the public. Should he suffer a seizure his own life may be endangered as well as the lives of would-be rescuers. Additionally, any tools with which he was working, if dropped, may be hazardous to persons below.

E. CONCLUSION

THESE PROPOSED GUIDELINES ON THE APPLICATION OF THE INDIVIDUAL'S RIGHTS PROTECTION ACT TO A PERSON WITH A PHYSICAL CHARACTERISTIC IN EMPLOYMENT have been developed to provide the public with assistance in complying with sections 7 and 8 of the Individual's Rights Protection Act.

The guidelines are based on the fundamental principle accepted by the Alberta Human Rights Commission, that persons with a physical disability should be accommodated, to the greatest extent possible, within the environment enjoyed by persons without a physical disability. This is the principle of reasonable accommodation. A working definition of reasonable accommodation has been provided. Further, having a physical disability does not decrease the rights and responsibilities of an individual as a member of society. Finally, employment practices should not be designed or implemented to exclude a person with a physical disability.

The guidelines address three major areas: physical accessibility to employment; requirements and qualifications for employment; and health or safety.

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INSTRUCTIONS
FOR THE USE OF
THE RESPONSE FORM

1. Return completed Response Form(s) to:

   Mr. Jack Tutty
   Executive Director
   Alberta Human Rights Commission
   902, 10808 - 99 Avenue
   Edmonton, Alberta
   T5K 0G2

2. Please use this Response Form to submit your comments as the form has been designed to facilitate the processing of responses to the proposed guidelines.

   One sheet should be used for each section you wish to comment on. If more than one section of the proposed guidelines are to be addressed, please reproduce additional copies of the form.

   If the comments are more general in nature and do not address specific sections, general written submissions will be accepted and considered by the Commission.

3. Please check appropriate space to identify the particular section your response is addressing. It is important that the "Comments" "Proposed Re-wording" "and Rationale for Re-wording" sections relate to the space checked. If additional space is required please attach a separate sheet.

4. DEADLINE FOR SUBMISSION: To expedite the final review of these guidelines, Response Form or general comments should be returned to the above address **ON OR BEFORE 1:00 P.M. WEDNESDAY, AUGUST 31, 1983.**

5. All responses will be kept by the Alberta Human Rights Commission as a matter of Public Record.

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RESPONSE FORM

PROPOSED GUIDELINES ON THE APPLICATION OF THE INDIVIDUAL'S RIGHTS PROTECTION ACT TO PERSONS WITH A PHYSICAL CHARACTERISTIC IN EMPLOYMENT

REFERENCE SECTION
(Please check appropriate space for particular section you are commenting on)

B. Definitions
- Physical Characteristics ..... ____
- Infirmity ..... ____
- Employment Practices ..... ____
- Equal Treatment ..... ____

C. Reasonable Accommodation
- Underlying Principle ..... ____
- Definition ..... ____
- Special Circumstances ..... ____

D.I Physical Accessibility to Employment
- Guideline ..... ____
- Interpretation ..... ____

D.II Requirements and Qualifications for Employment
- Guideline ..... ____
- Position Descriptions ..... ____
- Application Forms ..... ____
- Job Related Listing ..... ____
- Job Related Medicals ..... ____
- Interpretation ..... ____

D.III Health and Safety
- Guideline ..... ____
- Interpretation ..... ____

PLEASE PRINT OR TYPE

COMMENTS:

COMMENTS CONTINUED:

PROPOSED RE-WORDING:

RATIONALE FOR RE-WORDING:

Please Print

NAME: _____

TITLE: _____

AFFILIATION: _____

TELEPHONE: _____ **ADDRESS:** _____

_____

_____

F. SUMMARY OF GUIDELINES

I. PHYSICAL ACCESSIBILITY TO EMPLOYMENT

A PERSON WITH A PHYSICAL DISABILITY SHOULD NOT BE DENIED ACCESS TO EMPLOYMENT SOLELY ON THE BASIS OF HIS/HER PHYSICAL DISABILITY.

II. REQUIREMENTS AND QUALIFICATIONS FOR EMPLOYMENT

THE SAME JOB REQUIREMENTS AND QUALIFICATIONS IN EMPLOYMENT PRACTICES MUST APPLY EQUALLY TO A PHYSICALLY DISABLED PERSON AS APPLY TO ALL OTHER PERSONS.

III. HEALTH OR SAFETY

IF, FOR HEALTH OR SAFETY REASONS, AN INDIVIDUAL WITH A PHYSICAL DISABILITY IS REFUSED EMPLOYMENT, OR HIS/HER EMPLOYMENT IS TERMINATED, IT MUST BE BECAUSE OF A HAZARD TO THE HEALTH OR SAFETY OF ANY EMPLOYEE OR THE PUBLIC